

(1992) 03 KAR CK 0041
In the Karnataka High Court
Case No : W.A. No. 970 of 1991

Karnataka State Bar Council and Others APPELLANT
Vs
Sri. H. Subramanya Jois and Others RESPONDENT

Date of Decision : 23-03-1992

Acts Referred:

Advocates Act, 1961 — Section 35 (1), 36 B
Bar Council of India Rules, 1961 — Rule 17 (1), 17 (2)

Citation : AIR 1993 Kar 7 : (1992) ILR (Kar) 1377 : (1992) 2 KarLJ 152

Hon'ble Judges : S.P. Bharucha, C.J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : Sri B.V. Acharya and Sri B.L. Acharya, for the Appellant; Sri H.L. Sridhara Murthy, for the Respondent

Judgement

Shivashankar Bhat, J.—The 1st respondent herein was the petitioner in the writ petition; he sought the quashing of the Resolution of the Appellant-Bar Council dated 26-6-1983 whereby the Bar Council resolved to refer to its Disciplinary Committee a complaint dated 10-2-1982 received by the Bar Council against the petitioner. The petitioner also sought the quashing of the two orders of the Disciplinary Committee, whereby the objections of the petitioner against the enquiry were overruled.

2. We are not concerned with the merits of the complaint against the petitioner. Question involved is purely one of law, as to the period of limitation governing the disposal of a complaint lodged with the Bar Council.

3. Complaint was lodged with the Bar Council, against the petitioner on 10th February, 1982; after calling for the remarks of the petitioner, the Bar Council resolved to refer the complaint to the Disciplinary Committee on 13-2-1983 (an year after the receipt of the complaint); according to the petitioner, the complaint had to be disposed of within one year of the receipt of the complaint by the Bar Council and, therefore, on 13th February 1983 it had no competence to refer the complaint to the Disciplinary Committee. This objection of the

petitioner was rejected by the Disciplinary Committee, once on 12-12-1983 and again on 25-12-1983. Hence the writ petition.

4. The learned single Judge accepted the petitioner's contention, by holding that the purpose of the period of limitation prescribed by the Advocates Act, 1961 ("the Act" for short) is to require an early and expeditious disposal of the complaints against an Advocate and therefore the period of one year prescribed under S. 36-B of the Act is to be computed from the date of the receipt of complaint by the Bar Council and not from the date of the reference of complaint to the Disciplinary Committee.

5. Mr. B. V. Acharya, the learned Senior counsel for the Bar Council contended that a plain reading of S. 36-B of the Act would show that the limitation has to be computed from the date of reference to the Disciplinary Committee; the learned counsel further pointed out that Rule 17 (2) of Chapter-I, Part-VII of the Bar Council of India Rules ("the Rules", for short) would further strengthen this submission of his.

6. It is necessary to refer to the relevant provisions of the Act and the Rules to appreciate the question involved before us.

Sec. 35(1) states that,--

"Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee".

Thus, a case may be referred to the Disciplinary Committee, either on receipt of a complaint by the State Bar Council, or the Bar Council may suo motu institute the proceedings by taking note of the conduct of an Advocate and refer the same to the Disciplinary Committee. The disposal of the disciplinary proceedings is provided for in S. 36-B, of which its sub-section (1) is relevant here. It reads :

"The disciplinary committee of a State Bar Council shall dispose of the complaint received by it u/s 35 expeditiously and in each case the proceedings shall be concluded within a period of one year from the date of receipt of the complaint or the date of initiation of proceedings at the instance of the State Bar Council, as the case may be, failing which such proceedings shall stand transferred to the Bar Council of India which may dispose of the same as if it were a proceeding withdrawn for inquiry under sub-section (2) of Section 36".

7. The disposal of the complaint referred here is to be by the Disciplinary Committee; the mandate of the provisions of S. 36-B(1) is clearly directed to the Disciplinary Committee requiring it to dispose of the complaint. However, the petitioner's contention was that the words -- "in each case the proceeding shall be concluded within a period of one year from the date of receipt of the complaint" --in S. 36-B(1) are to be understood, as referring to the complaint received by the Bar Council, and not by the Disciplinary Committee. This overlooks the content of S. 36-B(1); subject matter of S. 36-B(1) is the disposal

of the case may be by the Disciplinary Committee. Case may be referred to the Disciplinary Committee, either on receipt of the complaint by the Bar Council or by the Bar Council suo motu. When a case is referred by the Bar Council suo motu (without any complaint being received by it), then, certainly the Disciplinary Committee is given an year's time from the date of reference to conclude the proceedings before it; this is very clear from the words "shall be concluded within a period of one year from..... the date of initiation of the proceedings at the instance of the State Bar Council". If so, naturally, a different period of limitation to conclude the proceedings by the Disciplinary Committee, when it is a case of a reference of a complaint, could not have been thought of. At any rate, a plain reading of Sec. 36-B(1) conveys the meaning that the period of one year, is the period provided to consider the proceedings by the Disciplinary Committee and, therefore, such a period would commence only when the proceedings of the Disciplinary Committee are initiated and not earlier.

8. Rule 17(2) makes the position further clear. It reads :

"The date of receipt of the complaint or the date of the initiation of the proceedings at the instance of the State Bar Council shall be the date on which the State Bar Council refers the case for disposal to its Disciplinary Committee under Sec. 35(1)."

Confining the above words to the instant case, Rule 17(2) would read:

"The date of receipt of the complaint..... shall be the date on which the State Bar Council refers the case for disposal to the Disciplinary Committee under Sec. 35(1)."

9. Rule 17(2) actually identifies the relevant date. It points out that in the case of a complaint, the date of its receipt is not the actual date when the Bar Council received it, but, it is the date on which the case is referred to the Disciplinary Committee for disposal. It is impossible to understand this Rule in any other manner.

10. If the case is not disposed of within the prescribed period, proceedings are to be transferred to the Bar Council of India under Sec. 36-B. For this purpose, Rule 17(1) requires the Secretary of every State Bar Council to furnish the relevant particulars to the Bar Council of India. It is in this context Rule 17(2) clarifies that the "date of receipt of the complaint" shall be the date on which the case is referred to the Disciplinary Authority, so that if proceedings are not completed within one year from the said date, the case shall stand transferred to the Bar Council of India.

11. The learned Counsel for the appellants did not raise any other contention and therefore it is unnecessary for us to go into other questions dealt by the learned single Judge in his order.

12. Consequently, this writ appeal is allowed without any order as to costs.

13. Appeal allowed.